

Testimony of Eric W. Gjede
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Before the Committee on Labor and Public Employees
Hartford, CT
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Testifying in opposition (as written) to SB 242: AAC Sick Leave For Teachers Assistants and Radiologic Technologists

Good afternoon Senator Holder-Winfield, Representative Tercyak, Senator Markley, Representative Smith and members of the Labor and Public Employees Committee. My name is Eric Gjede and I am assistant counsel at the Connecticut Business and Industry Association (CBIA), which represents more than 10,000 large and small companies throughout the state of Connecticut.

We urge the committee to modify SB 242 to give employers more flexibility in how they administer paid sick leave and correct inconsistencies within the bill.

After passage, ambiguities in the paid sick leave law forced the labor department to spend two years touring the state to explain the law to the business community. While conducting these presentations, it became clear to both the state's labor department and business community that clarifications to the law were needed. Many indicated that the administrative burden to comply with the law could be lessened if some flexibility was added for businesses.

We urge the committee to adopt the language attached to this testimony. The attached language provides businesses with a little flexibility in how they administer the law. It should be noted that this additional language would not take away the benefit from a single person currently entitled to it under law.

Here's how these additional changes would help businesses:

1. It provides businesses the flexibility to administer paid sick leave on the same calendar or fiscal year that they administer other employee benefits.
2. Manufacturers were never supposed to be subject to the paid sick leave law. Removing the word "establishment" fixes a legal loophole that could result in manufacturers with more than one facility being subject to the law.
3. Allows businesses to report the number of employees using the same method as FMLA. This would prevent businesses that never had more than 49 employees at a given moment during a three month period from having to report former employees – thereby becoming subject to the mandate as a result of the natural fluctuation in the workforce.

These simple fixes to paid sick leave will resolve legal ambiguities and help make the law work better for both employees and employers.

AN ACT CREATING PARITY BETWEEN PAID SICK LEAVE BENEFITS AND OTHER EMPLOYER-PROVIDED BENEFITS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Section 31-57r of the general statutes is repealed and the following is substituted in lieu thereof (*Effective January 1, 2015*):

As used in this section and sections 31-57s to 31-57w, inclusive, as amended by this act:

(1) "Child" means a biological, adopted or foster child, stepchild, legal ward of a service worker, or a child of a service worker standing in loco parentis, who is (A) under eighteen years of age; or (B) eighteen years of age or older and incapable of self-care because of a mental or physical disability;

(2) "Day or temporary worker" means an individual who performs work for another on (A) a per diem basis, or (B) an occasional or irregular basis for only the time required to complete such work, whether such individual is paid by the person for whom such work is performed or by an employment agency or temporary help service, as defined in section 31-129;

(3) "Employee" means an individual engaged in service to an employer in the business of the employer;

(4) "Employer" means any person, firm, business, educational institution, nonprofit agency, corporation, limited liability company or other entity that employs fifty or more individuals in the state, [in any one quarter in the previous year,] which shall be determined [on January first, annually. Such determination shall be made based upon the wage information submitted to the Labor Commissioner by the employer pursuant to subsection (j) of section 31-225a] based on the employer's payroll for the week containing October first, annually. "Employer" does not include: (A) Any business [establishment classified in] that is primarily engaged in activities that would be included in sector 31, 32 or 33 in the North American Industrial Classification System, or (B) any nationally chartered organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as from time to time amended, that provides all of the following services: Recreation, child care and education;

(5) "Family violence" has the same meaning as provided in section 46b-38a;

(6) "Retaliatory personnel action" means any termination, suspension, constructive discharge, demotion, unfavorable reassignment, refusal to promote, disciplinary action or other adverse employment action taken by an employer against an employee or a service worker;

(7) "Service worker" means an employee primarily engaged in an occupation with one of the following broad or detailed occupation code numbers and titles, as defined by the federal Bureau of Labor Statistics Standard Occupational Classification system or any successor system: (A) 11-9050 Food Service Managers; (B) 11-9110 Medical and Health Services Managers; (C) 21-1020 Social Workers; (D) 21-1093 Social and Human Service Assistants; (E) 21-1094 Community Health Workers; (F) 21-1099 Community and Social Service Specialists, All Other; (G) 25-4020 Librarians; (H) 29-1050 Pharmacists; (I) 29-1070 Physician Assistants; (J) 29-1120 Therapists; (K) 29-1140 Registered Nurses; (L) 29-1150 Nurse Anesthetists; (M) 29-1160 Nurse Midwives; (N) 29-1170 Nurse Practitioners; (O) 29-2020 Dental Hygienists; (P) 29-2040 Emergency Medical Technicians and Paramedics; (Q) 29-2050 Health Practitioner Support Technologists and Technicians; (R) 29-2060 Licensed Practical and Licensed Vocational Nurses; (S) 31-1011 Home Health Aides; (T) 31-1012 Nursing Aides, Orderlies and Attendants; (U) 31-1013 Psychiatric Aides; (V) 31-9091 Dental Assistants; (W) 31-9092 Medical Assistants; (X) 33-9032 Security Guards; (Y) 33-9091 Crossing Guards; (Z) 35-1010 Supervisors of Food Preparation and Serving Workers; (AA) 35-2010 Cooks; (BB) 35-2020 Food Preparation Workers; (CC) 35-3010 Bartenders; (DD) 35-3020 Fast Food and Counter Workers; (EE) 35-3030 Waiters and Waitresses; (FF) 35-3040 Food Servers, Nonrestaurant; (GG) 35-9010 Dining Room and Cafeteria Attendants and Bartender Helpers; (HH) 35-9020 Dishwashers; (II) 35-9030 Hosts and Hostesses, Restaurant, Lounge and Coffee Shop; (JJ) 35-9090 Miscellaneous Food Preparation and Serving Related Workers; (KK) 37-2011 Janitors and Cleaners, Except Maids and Housekeeping Cleaners; (LL) 37-2019 Building Cleaning Workers, All Other; (MM) 39-3030 Ushers, Lobby Attendants and Ticket Takers; (NN) 39-5010 Barbers, Hairdressers, Hairstylists and Cosmetologists; (OO) 39-6010 Baggage Porters, Bellhops and Concierges; (PP) 39-9010 Child Care Workers; (QQ) 39-9021 Personal Care Aides; (RR) 41-1010 First-Line Supervisors of Sales Workers; (SS) 41-2011 Cashiers; (TT) 41-2021 Counter and Rental Clerks; (UU) 41-2030 Retail Salespersons; (VV) 43-3070 Tellers; (WW) 43-4080 Hotel, Motel and Resort Desk Clerks; (XX) 43-4170 Receptionists and Information Clerks; (YY) 43-5020 Couriers and Messengers; (ZZ) 43-6010 Secretaries and Administrative Assistants; (AAA) 43-9010 Computer Operators; (BBB) 43-9020 Data Entry and Information Processing Workers; (CCC) 43-9030 Desktop Publishers; (DDD) 43-9040 Insurance Claims and Policy Processing Clerks; (EEE) 43-9050 Mail Clerks and Mail Machine Operators, Except Postal Service; (FFF) 43-9060 Office Clerks, General; (GGG) 43-9070 Office Machine Operators, Except Computer; (HHH) 43-9080 Proofreaders and Copy Markers; (III) 43-9110 Statistical Assistants; (JJJ) 43-9190 Miscellaneous Office and Administrative Support Workers; (KKK) 51-3010 Bakers; (LLL) 51-3020 Butchers and Other Meat,

Poultry and Fish Processing Workers; (MMM) 51-3090 Miscellaneous Food Processing Workers; (NNN) 53-3010 Ambulance Drivers and Attendants, Except Emergency Medical Technicians; (OOO) 53-3020 Bus Drivers; or (PPP) 53-3040 Taxi Drivers and Chauffeurs, and is (i) paid on an hourly basis, or (ii) not exempt from the minimum wage and overtime compensation requirements of the Fair Labor Standards Act of 1938 and the regulations promulgated thereunder, as amended from time to time. "Service worker" does not include day or temporary workers;

(8) "Sexual assault" means any act that constitutes a violation of section 53a-70, 53a-70a, 53a-70b, 53a-71, 53a-72a, 53a-72b or 53a-73a; [and]

(9) "Spouse" means a husband or wife, as the case may be; [.] and

(10) "Year" means any three-hundred-sixty-five-day period used by an employer to calculate employee benefits.

Sec. 2. Section 31-57s of the general statutes is repealed and the following is substituted in lieu thereof (*Effective January 1, 2015*):

(a) Each employer shall provide paid sick leave annually to each of such employer's service workers in the state. Such paid sick leave shall accrue (1) beginning January 1, 2012, or for a service worker hired after said date, beginning on the service worker's date of employment, (2) at a rate of one hour of paid sick leave for each forty hours worked by a service worker, and (3) in one-hour increments up to a maximum of forty hours per [calendar] year. Each service worker shall be entitled to carry over up to forty unused accrued hours of paid sick leave from the current [calendar] year to the following [calendar] year, but no service worker shall be entitled to use more than the maximum number of accrued hours, as described in subdivision (3) of this subsection, in any year.

(b) A service worker shall be entitled to the use of accrued paid sick leave upon the completion of the service worker's six-hundred-eightieth hour of employment from January 1, 2012, if the service worker was hired prior to January 1, 2012, or if hired after January 1, 2012, upon the completion of the service worker's six-hundred-eightieth hour of employment from the date of hire, unless the employer agrees to an earlier date. A service worker shall not be entitled to the use of accrued paid sick leave if such service worker did not work an average of ten or more hours [a] per week for the employer in the most recent complete [calendar] quarter.

(c) An employer shall be deemed to be in compliance with this section if the employer offers any other paid leave, or combination of other paid leave that (1) may be used for the purposes of section 31-57t, as amended by this act, and (2) is accrued in total at a rate equal to or greater than the rate described in subsections (a) and (b) of this section.

For the purposes of this subsection, "other paid leave" may include, but not be limited to, paid vacation, personal days or paid time off.

(d) Each employer shall pay each service worker for paid sick leave at a pay rate equal to the greater of either (1) the normal hourly wage for that service worker, or (2) the minimum fair wage rate under section 31-58 in effect for the pay period during which the employee used paid sick leave. For any service worker whose hourly wage varies depending on the work performed by the service worker, the "normal hourly wage" shall mean the average hourly wage of the service worker in the pay period prior to the one in which the service worker used paid sick leave.

(e) Notwithstanding the provisions of this section and sections 31-57t to 31-57w, inclusive, as amended by this act, and upon the mutual consent of the service worker and employer, a service worker who chooses to work additional hours or shifts during the same or following pay period, in lieu of hours or shifts missed, shall not use accrued paid sick leave.

Sec. 3. Subsection (b) of section 31-57t of the general statutes is repealed and the following is substituted in lieu thereof (*Effective January 1, 2015*):

(b) If a service worker's need to use paid sick leave is foreseeable, an employer may require advance notice, not to exceed seven days prior to the date such leave is to begin, of the intention to use such leave. If a service worker's need for such leave is not foreseeable, an employer may require a service worker to give notice of such intention as soon as practicable. For paid sick leave of three or more consecutive days, an employer may require reasonable documentation that such leave is being taken for [the purpose] one of the purposes permitted under subsection (a) of this section. If such leave is permitted under subdivision (1) or (2) of subsection (a) of this section, documentation signed by a health care provider who is treating the service worker or the service worker's child or spouse indicating the need for the number of days of such leave shall be considered reasonable documentation. If such leave is permitted under subdivision (3) of subsection (a) of this section, a court record or documentation signed by a service worker or volunteer working for a victim services organization, an attorney, a police officer or other counselor involved with the service worker shall be considered reasonable documentation.